



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,632	09/05/2006	Martyn Vincent Twigg	JMYT-370US	3293
23122	7590	04/26/2010		
RATNERPRESTIA P.O. BOX 980 VALLEY FORGE, PA 19482			EXAMINER TAKEUCHI, YOSHITOSHI	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 04/26/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/591,632</p>	<p>Applicant(s) TWIGG, MARTYN VINCENT</p>	
	<p>Examiner YOSHITOSHI TAKEUCHI</p>	<p>Art Unit 1793</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 April 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-8, 10, 15, 16, 18 and 21-24.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: The IDS filed 4 September 2009, has been considered.

/ Roy King/
Supervisory Patent Examiner, Art Unit 1793

/YOSHITOSHI TAKEUCHI/
Examiner, Art Unit 1793

Continuation of 11. does NOT place the application in condition for allowance because:

1. Regarding the IDS form submitted on September 4, 2010, the examiner attached a signed IDS form indicating DE 4,040,450 has been considered.

2. The rejections under 35 U.S.C. § 103(a) of claims 1-8, 10, 15-16, and 22-23 over Shimrock; of claim 24 over Shimrock in view of Twigg; of claims 18, 20-21 over Shimrock in view of Ellis; or claim 19 over Shimrock in view of Ellis and Ikeda are maintained for the following reasons.

a. Regarding claim 1, the applicant first argues that Shimrock does not teach or suggest reducing the pressure in the pore structure prior to contacting the surface of the evacuated channel walls.

In response, the examiner respectfully refers to the prior Office action, which states, "Shimrock does not expressly teach reducing the pressure in the pore structure of the wall-flow filter occurs prior to contacting the surface of the evacuated channel walls with the liquid. However, claim 1 teaches the use of a vacuum, which can only be applied either before or after contacting the surface of the evacuated channel walls with the liquid. So, it would have been obvious to a person of ordinary skill at the time of the invention to draw a vacuum prior to contacting the surface of the evacuated channel walls with the liquid in the invention of Shimrock." (December 8, 2009 Office action p.4).

Furthermore, selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results. See *In re Burhans*, 154 F.2d 690 (CCPA 1946). See also MPEP § 2144.04(IV)(C).

b. Regarding claim 1, the applicant further argues Shimrock teaches away from applying the vacuum first since Shimrock requires the substrate to be in contact with the slurry before applying the vacuum (7:3-10).

In response, said portion of the Shimrock disclosure teaches a method of optimizing the coating impregnation, as can be seen by the disclosure prior to and after said section, rather than the feasibility of coating by only applying a vacuum after the monolith is partially submerged.

c. Regarding claim 1, the applicant also argues Shimrock fails to disclose or suggest a wall-flow meter and instead teaches a method of making a ceramic monolithic catalyst support, wherein a person of ordinary skill in the art would recognize the flow path of the instant invention and the art reference would be different.

In response, an argument of counsel is insufficient to overcome a prima facie showing of obviousness. Once a prima facie case of obviousness is established, the burden shifts to the applicant to come forward with arguments or evidence to rebut the prima facie case. See, e.g., *In re Dillon*, 919 F.2d 688, 692 (Fed. Cir. 1990). Rebuttal evidence and arguments can be presented by way of an affidavit or declaration under 37 CFR 1.132, e.g., 54 F.3d 746, 750 (Fed. Cir. 1995). However, arguments of counsel cannot take the place of factually supported objective evidence. See, e.g., *In re Huang*, 100 F.3d 135, 139-40 (Fed. Cir. 1996). See also MPEP § 2145.

d. Regarding claims 2-8, 10, 15-16 and 18-24, the applicant argues said claims should be allowable for the same and similar reasons provided supra.

In response, the examiner respectfully refers to the responses supra.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOSHITOSHI TAKEUCHI whose telephone number is (571) 270-5828. The examiner can normally be reached on Monday-Thursday 9:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YOSHITOSHI TAKEUCHI/
Examiner, Art Unit 1793.